Senate

General Assembly

File No. 272

January Session, 2015

Substitute Senate Bill No. 1026

Senate, March 26, 2015

The Committee on Insurance and Real Estate reported through SEN. CRISCO of the 17th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING THE REGULATION OF RISK RETENTION GROUPS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 38a-250 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2015*):

For purposes of sections 38a-250 to 38a-266, inclusive, and section 3 of this act:

(1) "Completed operations liability" means liability arising out of the installation, maintenance or repair of any product at a site which is not owned or controlled by any person who hires an independent contractor to perform that work, and shall include liability for activities which are completed or abandoned before the date of the occurrence giving rise to the liability;

(2) "Doing business" means effecting any of the following acts in this state by mail or otherwise: (A) The making of or proposing to make, as

an insurer, an insurance contract; (B) the making of or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other legitimate business or activity of the guarantor or surety; (C) the taking or receiving of any application for insurance; (D) the receiving or collection of any premium, commission, membership fees, assessments, dues or other consideration for any insurance or any party thereof; (E) the issuance or delivery of contracts of insurance to residents of this state or to persons authorized to do business in this state; (F) directly or indirectly acting as an agent for or otherwise representing or aiding on behalf of another any person or insurer in the solicitation, negotiation, procurement or effectuation of insurance or renewals thereof or in the dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts, or inspection of risks, a filing of rates or investigation or adjustment of claims or losses or in the transaction of matters subsequent to effectuation of the contract and arising out of it, or in any other manner representing or assisting a person or insurer in the transaction of insurance with respect to subjects of insurance resident, located or to be performed in this state; (G) the doing of or proposing to do any insurance business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of the general statutes relating to insurance; and (H) any other transactions of business in this state by an insurer. The venue of an act committed by mail is at the point where the matter transmitted by mail is delivered and takes effect;

(3) "Domicile", for purposes of determining the state in which a purchasing group is domiciled, means (A) for a corporation, the state in which the purchasing group is incorporated, and (B) for an unincorporated entity, the state of its principal place of business;

(4) "Hazardous financial condition" means that, based on its present or reasonably anticipated financial condition, a risk retention group is unlikely to be able (A) to meet obligations to policyholders with respect to known claims and reasonably anticipated claims, or (B) to pay other obligations in the normal course of business;

(5) "Insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance and any other arrangement for shifting and distributing risk which is determined to be insurance under applicable state or federal law;

(6) "Liability" means legal liability for damages, including costs of defense, legal costs and fees, and other claims expenses, because of injuries to other persons, damage to their property or other damage or loss to such other persons resulting from or arising out of (A) any business, whether profit or nonprofit, trade, product, services, including professional services, premises or operations, or (B) any activity of any state or local government or any agency or political subdivision thereof. "Liability" does not include personal risk liability and an employer's liability with respect to its employees other than legal liability under the Federal Employers' Liability Act (45 USC 51 et seq.);

(7) "Personal risk liability" means liability for damages because of injury to any person, damage to property or other loss or damage resulting from any personal, familial or household responsibilities or activities, rather than from responsibilities or activities referred to in subdivision (6) of this section;

(8) "Plan of operation or a feasibility study" means an analysis **[**which**]** that presents the expected activities and results of a risk retention group including, at a minimum, (A) for each state in which it intends to operate, the coverages, deductibles, coverage limits, rates and rating classification systems for each line of insurance the group intends to offer, (B) historical and expected loss experience of the proposed members and national experience of similar exposures to the extent that this experience is reasonably available, (C) pro forma financial statements and projections, (D) appropriate opinions by an independent member of the American Academy of Actuaries, including a determination of minimum premium or participation levels required to commence operations and to prevent a hazardous financial condition, (E) information sufficient to verify that its

members are engaged in businesses or activities similar or related with respect to the liability to which such members are exposed by virtue of any related, similar or common business, trade, product, services, premises or operations, (F) identification of management, underwriting and claims procedures, marketing methods, managerial oversight methods, investment policies and reinsurance agreements, (G) identification of each state in which the risk retention group has obtained, or sought to obtain, a charter and license, and a description of its status in each such state, and (H) such other matters as may be prescribed by the commissioner of the state in which the risk retention group is chartered for liability insurance companies authorized by the insurance laws of that state;

(9) "Product liability" means liability for damages because of any personal injury, death, emotional harm, consequential economic damage, or property damage, including damages resulting from loss of use of property, arising out of the manufacture, design, importation, distribution, packaging, labeling, lease or sale of a product. **[**, but**]** "Product liability" does not include the liability of any person for those damages if the product involved was in the possession of such a person when the incident giving rise to the claim occurred;

(10) "Purchasing group" means any group **[**which**]** that: (A) Has as one of its purposes the purchase of liability insurance on a group basis; (B) purchases such insurance only for its group members and only to cover their similar or related liability exposure, as described in subparagraph (C) of this subdivision; (C) is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar or common business, trade, product, services, premises or operations; and (D) is domiciled in any state;

(11) "Risk retention group" means any corporation or other limited liability association: (A) Whose primary activity consists of assuming and spreading all, or any portion, of the liability exposure of its group members; (B) **[**which**]** that is organized for the primary purpose of

conducting the activity described under subparagraph (A) of this subdivision; (C) **[**which**]** that (i) is chartered and licensed as a liability insurance company under the laws of a state and authorized to engage in the business of insurance under the laws of such state, or (ii) before January 1, 1985, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before such date, had certified to the insurance commissioner of at least one state that it satisfied the capitalization requirements of such state, except that any such group shall be considered to be a risk retention group only if it has been engaged in business continuously since such date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability, as such terms were defined in the Product Liability Risk Retention Act of 1981, (15 USC 3901 et seq.), before the date of the enactment of the Liability Risk Retention Act of 1986; (D) **[**which**]** that does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person; (E) **[**which**]** that (i) has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group, or (ii) has as its sole owner an organization **[**which**]** that has as its members only persons who comprise the membership of the risk retention group, and as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group; (F) whose members are engaged in businesses or activities similar or related with respect to the liability to which such members are exposed by virtue of any related, similar or common business, trade, product, services, premises or operations; (G) whose activities do not include the provision of insurance other than (i) liability insurance for assuming and spreading all or any portion of the similar or related liability exposure of its group members, and (ii) reinsurance with respect to the similar or related liability exposure of any other risk retention group, or any member of such other group, **[**which**]** that is engaged in businesses or activities so that such group or member meets the requirement described in subparagraph (F) of this

subdivision for membership in the risk retention group [which] that provides such reinsurance; and (H) the name of which includes the phrase "Risk Retention Group";

(12) "State" means any state of the United States or the District of Columbia.

Sec. 2. Section 38a-251 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2015*):

(a) A risk retention group seeking to be chartered in this state shall be chartered and licensed as a liability insurance company authorized by the insurance laws of this state and, except as provided in sections 38a-250 to 38a-266, inclusive, as amended by this act, shall comply with all [of the] laws, rules, regulations and requirements applicable to such insurers chartered and licensed in this state, and with section 38a-252, as amended by this act, to the extent such requirements are not a limitation on laws, rules, regulations or requirements of this state.

(b) Before it may offer insurance in any state, each risk retention group shall [also] submit for approval to the Insurance Commissioner [of this state] (1) a plan of operation or a feasibility study; and (2) revisions [of] to such plan or study [if the group intends to] of any material change in any item of such plan or study, not later than ten days after any such change occurs or has been made. A risk retention group shall not offer any additional lines of liability insurance in this state or any other state until such plan or study has been revised and the commissioner has approved such revision.

(c) A risk retention group shall provide to the commissioner with its application filing for charter the following information in summary form: (1) The identity of the initial members of the group; (2) the identity of the individuals who organized the group or who will provide administrative services or influence or control coverages to be offered; and (3) the states in which the group intends to operate. The commissioner shall forward such information upon receipt to the National Association of Insurance Commissioners.

Sec. 3. (NEW) (*Effective October 1, 2015*) (a) Each risk retention group seeking to be chartered and licensed in this state shall comply with the following governance standards at the time of licensure or, for a risk retention group chartered in this state prior to October 1, 2015, not later than October 1, 2016:

(1) (A) Each risk retention group shall be governed by a board of directors who are elected by the owners or members of such group. A majority of the board of directors shall be independent.

(B) If a risk retention group is a reciprocal risk retention group, the attorney-in-fact acting as the agent or manager of such group shall be independent, as described in subparagraphs (D) and (E) of this subdivision, and comply with the governance standards set forth in this section.

(C) The members of any member advisory committees established by the board of directors of a risk retention group shall be independent, as described in subparagraphs (D) and (E) of this subdivision, and comply with the governance standards set forth in this section.

(D) (i) For the purposes of this section, no director shall qualify as independent unless the board of directors affirmatively determines that such director has no material relationship with such risk retention group. Any individual who is a direct or an indirect owner of or an insured in the risk retention group as described in subparagraph (E)(ii) of subdivision (11) of section 38a-250 of the general statutes, as amended by this act, or is an officer, director or employee of such an owner or insured, shall be deemed to be independent unless a different position or relationship of such owner, member, officer, director or employee constitutes a material relationship.

(ii) Each risk retention group shall disclose such determinations at least annually to the Insurance Commissioner.

(E) As used in this section, "material relationship" includes, but is

not limited to:

(i) The receipt by an individual set forth in subparagraphs (A) to (C), inclusive, of this subdivision, such individual's immediate family member or any business with which such individual is affiliated, from the risk retention group or a consultant to or service provider for such group, of compensation or payment in any one twelve-month period of five per cent or greater of the risk retention group's gross written premiums for such twelve-month period or two per cent of its surplus, whichever is greater. Such individual shall not be deemed to be independent for the purposes of this section until one year after such compensation or payment from such group falls below the threshold set forth herein;

(ii) The affiliation or employment in a professional capacity of a director or a director's immediate family member with a present or former internal or external auditor of the risk retention group. Such director shall not be deemed to be independent for the purposes of this section until one year after the end of such affiliation or employment or the auditing relationship; and

(iii) The employment of a director or a director's immediate family member, as an executive officer with another company at which any of the risk retention group's current officers serve as members of such other company's board of directors. Such director shall not be deemed independent for the purposes of this section until one year after the end of such employment or service.

(2) (A) No material contract between a risk retention group and a service provider shall include a term that exceeds five years. A contract is deemed to be material if the amount paid under such contract is five per cent or greater than the risk retention group's annual gross written premiums or two per cent of its surplus, whichever is greater. The board of directors shall approve by a majority vote any such contract or its renewal. The board of directors may terminate any such contract for cause at any time, provided any notice requirement included in such contract is satisfied.

(B) No service provider contract under which a material relationship would exist shall be entered into unless the risk retention group has notified the commissioner in writing of its intent to enter into such contract at least thirty days prior to entering into such contract and the commissioner has not disapproved it within such period.

(C) Any contract between a reciprocal risk retention group and a service provider shall be between such group and not the attorney-in-fact for such group.

(D) As used in this subsection, (i) "service provider" means a captive manager, an auditor, an accountant, an actuary, an investment advisor, an attorney, a managing general underwriter and any other party responsible for underwriting, determining premium rates, collecting premiums, adjusting and settling claims and preparing financial statements. An attorney under this subparagraph does not include defense counsel retained by a risk retention group to defend claims unless the attorneys' fees for such counsel are material, as described in subparagraph (A) of this subdivision, and (ii) "captive manager" means an individual or entity contracted by a captive insurance company, as defined in section 38a-91aa of the general statutes, to manage such company's affairs.

(3) The board of directors of each risk retention group shall adopt a written policy in its plan of operation or a feasibility study that requires the board of directors to: (A) Ensure that all owners and members of such group receive evidence of ownership interest; (B) develop a set of governance standards applicable to such group; (C) oversee the evaluation of such group's management, including, but not limited to, the performance of the captive manager, managing general underwriter or other parties responsible for underwriting, determining premium rates, collecting premiums, adjusting and settling claims and preparing financial statements; (D) review and approve the amount to be paid to a service provider under a material contract; and (E) review and approve at least annually (i) such group's goals and objectives

relative to the compensation of its officers and service providers, (ii) such officers' and service providers' performances in light of such goals and objectives, and (iii) the continued engagement of such officers and service providers.

(4) (A) Each risk retention group shall establish an audit committee composed of at least three independent members of the board of directors. The audit committee may invite a nonindependent member of the board of directors to participate in such committee's activities, but such nonindependent member shall not be a member of such committee.

(B) The audit committee shall adopt a written charter that defines the committee's purposes that shall, at a minimum, be to: (i) Assist the board of directors with oversight of the integrity of financial statements, compliance with legal and regulatory requirements and the qualifications, independence and performance of any auditor or actuary contracted with by the risk retention group; (ii) discuss the annual audited financial statements and the quarterly financial statements with members of the management of the risk retention group; (iii) discuss the annual audited financial statements and, if advisable, the quarterly financial statements, with such group's external auditor; (iv) discuss policies with respect to such group's risk assessment and risk management; (v) meet separately and periodically, directly or through a designated member of the committee, with members of the management of the risk retention group and with such group's external auditor; (vi) review with such group's external auditor any audit problems or difficulties and the response from members of the management of such group; (vii) set clear hiring policies for the risk retention group for the hiring of employees of or former employees of such group's external auditor; (viii) require such group's external auditor to rotate or coordinate the lead auditor having primary responsibility for such group's audit and the auditor responsible for reviewing such group's audit so that no individual performs audit services for such group for more than five consecutive years; and (ix) report on its activities regularly to the risk

retention group's board of directors.

(C) The commissioner may waive the requirement to establish an audit committee if a risk retention group demonstrates to the commissioner that it is impracticable to do so and such group's board of directors is itself able to accomplish the purposes of such committee, as set forth in subparagraph (B) of this subdivision.

(5) (A) The board of directors of a risk retention group shall adopt governance standards for such group and a code of business conduct and ethics for the officers, directors and employees of such group. Such code shall include, but not be limited to, (i) conflicts of interest, (ii) the matters covered under the corporate opportunities doctrine in the risk retention group's state of domicile, (iii) confidentiality, (iv) fair dealing, (v) the protection and proper use of the assets of such group, (vi) compliance with all laws, rules, regulations and requirements applicable to such group, (vii) the required reporting of any illegal or unethical behavior that affects the operations of the risk retention group, and (viii) any waivers of such code for officers or directors.

(B) The board of directors shall disclose the standards and code set forth in subparagraph (A) of this subdivision by posting such standards and code to the risk retention group's Internet web site or by other means. The board of directors shall provide to members and insureds, upon request, additional information that includes (i) the process by which members of the board of directors are elected, (ii) the qualifications required to be a member of the board of directors, (iii) the responsibilities of the board of directors, (iv) the access of a member of the board of directors to members of the management of the risk retention group and to independent advisors, (v) the compensation for serving as a member of the board of directors, (vi) the orientation process for and continuing education requirements or opportunities for a member of the board of directors, (vii) the policies and procedures followed by the risk retention group for management succession, and (viii) the policies and procedures followed by the risk retention group for the annual performance evaluation of the members

of the board of directors.

(6) The captive manager, president or chief executive officer of a risk retention group shall notify the commissioner promptly in writing if such manager, president or chief executive officer becomes aware of any material noncompliance with the provisions of this section.

(b) The commissioner may examine any documents or materials relating to the requirements set forth in this section for a risk retention group chartered and licensed in this state.

Sec. 4. Section 38a-252 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2015*):

(a) Risk retention groups chartered in states other than this state and seeking to do business as a risk retention group in this state shall, prior to offering insurance in this state submit to the Insurance Commissioner: (1) A statement identifying the state or states in which the risk retention group is chartered and licensed as a liability insurance company, date of chartering, its principal place of business **[**,**]** and such other information, including information on its membership, as the commissioner may require to verify that the risk retention group satisfies the **[**definitional**]** requirements of **[**subdivision (11) of**]** a risk retention group, as defined in section 38a-250, as amended by this act; (2) a copy of its plan of operations or a feasibility study and revisions of such plan or study submitted to its state of domicile, provided the provision relating to the submission of a plan of operation or a feasibility study shall not apply with respect to any line or classification of liability insurance **[**which**]** that (A) was defined in the Product Liability Risk Retention Act of 1981 before the date of the enactment of the Liability Risk Retention Act of 1986, and (B) was offered before such date by any risk retention group **[**which**]** that had been chartered and operating for not less than three years before such date; and (3) a statement of registration **[**which**]** that designates the commissioner as its agent for the purpose of receiving service of legal documents or process.

(b) A risk retention group under subsection (a) of this section shall submit to the commissioner a copy of any material revisions of its plan of operations or a feasibility study submitted to its state of domicile not later than thirty days after the date the chief insurance regulatory official of such group's state of domicile approves such revisions or, if no such approval is required, not later than thirty days after submission to such group's state of domicile.

Sec. 5. Section 38a-253 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2015*):

(a) Each risk retention group not domiciled in this state that is doing business in this state shall submit to the Insurance Commissioner: (1) A copy of the group's financial statement submitted to its state of domicile, **[**which**]** that shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a qualified loss reserve specialist under criteria established by the National Association of Insurance Commissioners; (2) a copy of each examination of the risk retention group as certified by the commissioner or public official conducting the examination; (3) upon request by the commissioner, a copy of any information or document pertaining to any outside audit performed with respect to the risk retention group; and (4) such information as may be required to verify that **[**it**]** such risk retention group satisfies the **[**definitional**]** requirements of **[**subdivision (11) of**]** a risk retention group, as defined in section 38a-250, as amended by this act.

(b) Each risk retention group doing business in this state shall, annually, on or before the first day of March, submit to the commissioner, by electronically filing with the National Association of Insurance Commissioners, a true and complete report, signed and sworn to by its president or a vice president, and secretary or an assistant secretary, of its financial condition on the thirty-first day of December next preceding, prepared as submitted to its state of domicile.

(c) Each risk retention group shall submit to an examination by the Insurance Commissioner to determine its financial condition if the commissioner of the jurisdiction in which the group is chartered and licensed has not initiated an examination or does not initiate an examination within sixty days after a request by the Insurance Commissioner of this state. Any such examination shall be coordinated to avoid unjustified repetition and conducted in an expeditious manner and in accordance with the National Association of Insurance Commissioners' Examiner Handbook.

Sec. 6. Section 38a-255 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2015*):

[Any**]** Each application for insurance from a risk retention group and each policy issued by a risk retention group shall contain in ten point type on the front page and the declaration page, the following notice:

NOTICE

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your risk retention group.

This act shall take effect as follows and shall amend the following sections:		
Section 1	*October 1, 2015*	38a-250
Sec. 2	*October 1, 2015*	38a-251
Sec. 3	*October 1, 2015*	New section
Sec. 4	*October 1, 2015*	38a-252
Sec. 5	*October 1, 2015*	38a-253
Sec. 6	*October 1, 2015*	38a-255

INS *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill makes a variety of statutory changes concerning risk retention groups. There is no associated fiscal impact.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis

sSB 1026

AN ACT CONCERNING THE REGULATION OF RISK RETENTION GROUPS.

SUMMARY:

This bill requires a risk retention group (RRG) seeking to be chartered and licensed in Connecticut on or after October 1, 2015 to meet specific governance standards at the time of licensure. An RRG chartered prior to October 1, 2015 must comply with the standards by October 1, 2016. An RRG is a type of self-insured group organized under state and federal laws and formed to spread its commercial liability risks among its members. An RRG may operate in multiple states, but is primarily regulated by its domiciled state (see BACKGROUND).

The standards require an RRG to, among other things, be governed by a board of directors the majority of whom are independent. The board must be elected by the owners or members. The bill also (1) requires an RRG's captive manager, president, or chief executive officer to promptly notify the insurance commissioner, in writing, if he or she becomes aware of any material noncompliance with the standards and (2) gives the insurance commissioner the authority to examine any documents or materials relating to the standards.

The bill also (1) expands provisions regarding what information certain RRGs must submit to the commissioner, including RRGs chartered outside of Connecticut and (2) adds a notice requirement, already required on policies issued by an RRG, to applications as well.

The bill also makes minor, technical, and conforming changes.

EFFECTIVE DATE: October 1, 2015

BOARD OF DIRECTORS

Independence

The bill requires RRGs seeking to be chartered and licensed in Connecticut to be governed by a board of directors, a majority of whom must be independent. It also requires (1) all committee members of any member advisory committee the board establishes and (2) in the case of a reciprocal RRG, the attorney-in-fact acting as the RRG agent or manager, to be independent and comply with all governing standards. (Members of a reciprocal RRG exchange insurance contracts through an attorney-in-fact, who manages the group. Profits and losses are distributed back to each member.)

To qualify as independent, a director, member, or attorney-in-fact must be affirmatively determined by the board to have no material relationship (see below) with the RRG. However, for an RRG owned solely by an organization that is comprised exclusively of the RRG's members, the following individuals must be deemed independent unless a different position or relationship constitutes a material relationship: a direct or indirect owner, insured, officer, director, or employee of an owner or insured.

The bill prohibits the board from determining that an individual is independent until one year after he or she no longer has a material relationship with the RRG.

The bill requires an RRG to disclose to the commissioner, at least annually, all such determinations.

Material Relationship

The bill defines a material relationship as:

1. a board member, attorney-in-fact, advisory committee member, their immediate family members, or any of their affiliated businesses receiving compensation above certain thresholds in the previous 12 months from the RRG or its consultants or service providers;

2. the affiliation or employment in a professional capacity of a director or a member of his or her immediate family with the RRG's present or former internal or external auditor; or

3. the employment of a director or a member of his or her immediate family as an executive officer with another company at which any of the RRG's current officers serve as board members.

For the first provision, the bill specifies the compensation threshold is the greater of (1) 5% of the RRG's gross written premiums or (2) 2% of its surplus.

Duties

Under the bill, such an RRG's board of directors must adopt a written policy in its plan of operation or a feasibility study that requires the board to (1) ensure that all of the RRG's owners and members receive evidence of their ownership interest; (2) develop a set of governance standards; (3) oversee the evaluation of the RRG's management, including the performance of the captive manager, managing general underwriter, or other parties responsible for underwriting, determining premium rates, collecting premiums, adjusting and settling claims, and preparing financial statements; and (4) review and approve the amount to be paid to a service provider under a material service contract (see below).

Under the policy, the board must also, at least annually, review and approve (1) the RRG's goals and objectives relative to the compensation of its officers and service providers, (2) such officers' and service providers' performances in light of the goals and objectives, and (3) the continued engagement of such officers and service providers.

The bill also requires the board to adopt governance standards for the RRG and a code of business conduct and ethics for the RRG's officers, directors, and employees. The code must include provisions relating to:

1. conflicts of interest;

2. matters covered under the corporate opportunities doctrine in the RRG's state of domicile;

3. confidentiality;

4. fair dealing;

5. the protection and proper use of the RRG's assets;

6. compliance with all applicable laws, rules, regulations, and requirements;

7. the required reporting of any illegal or unethical behavior that affects the RRG's operations; and

8. any waivers of the code of conduct and ethics for officers or directors.

The board must post the governance standards and code of conduct and ethics on the RRG's web site or disclose them through other means.

The board must also provide to members and insureds, upon request, additional information that includes the:

1. process for electing the board;

2. qualifications to be a board member;

3. responsibilities of the board;

4. access of a board member to the RRG's management and independent advisors;

5. board members' compensation;

6. board member orientation process and continuing education requirements or opportunities;

7. RRG's policies and procedures for management succession; and

8. RRG's policies and procedures for board members' annual performance evaluations.

Material Contracts

Under the bill, the board of directors must approve an initial or renewed material contract by a majority vote. The board may terminate such a contract for cause at any time, as long as it provides any notice the contract requires. A material contract is a contract that includes a payment for services of at least (1) 5% of the RRG's annual gross written premiums or (2) 2% of its surplus, whichever is greater.

The bill prohibits:

1. material contracts between an RRG and a service provider (see below) that include a term greater than five years; and

2. the board from entering a contract with a service provider with a material relationship to the RRG, unless (a) the RRG notifies the commissioner, in writing, of its intent within thirty days prior to entering into such a contract and (b) the commissioner has not disapproved it within that time.

For a reciprocal RRG, the bill specifies that any contract must be between the RRG and a service provider, instead of between the RRG's attorney-in-fact and the service provider.

The bill defines a service provider as a captive manager, auditor, accountant, actuary, investment advisor, managing general underwriter, or any other party responsible for underwriting, determining premium rates, collecting premiums, adjusting and settling claims, and preparing financial statements. Service provider also includes an attorney, unless retained by the RRG as defense counsel (except that an attorney whose fees constitute a material contract is still considered a service provider).

REPORTING REQUIREMENTS AND PRIOR COMMISSIONER APPROVAL

The bill requires an RRG seeking to be chartered in Connecticut to provide to the commissioner with its charter application a summary of the: (1) identity of the initial members of the group, (2) identity of the individuals who organized the group or who will provide administrative services or influence or control coverages to be offered, and (3) states in which the group intends to operate. The commissioner must forward this information upon receipt to the National Association of Insurance Commissioners (NAIC).

By law, before offering insurance, such an RRG must submit to the commissioner for approval its plan of operation or feasibility study. Current law also requires it to submit revisions to the plan or study if it intends to offer additional lines of liability insurance. The bill requires the revisions to be submitted (1) within 10 days of the change and (2) only for material changes. The bill specifies that RRGs are prohibited from offering additional liability insurance lines (in any state), until the commissioner approves the revised plan or study.

By law, the plan or study must include, among other components:

1. the historical and expected loss experience of the proposed members;

2. expert opinions on minimum premium or participation levels;

3. proof that its members are engaged in activity with similar risks; and

4. identification of its management, underwriting and claims procedures, and reinsurance agreements.

By law, all RRGs, regardless of where they are chartered or licensed, must include in the plan or study the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the RRG offers. The bill specifies that the plan or study must include this information for all states in which the RRG intends to operate.

AUDIT COMMITTEE

The bill requires each RRG seeking to be chartered and licensed in Connecticut to establish an audit committee composed of at least three independent members of the board. The audit committee may invite non-independent board members to participate in committee activities, although they are prohibited from becoming committee members.

The audit committee must adopt a written charter that defines the committee's purposes. At a minimum, the charter must require the committee to:

1. assist the board with oversight of the integrity of financial statements, compliance with legal and regulatory requirements, and the qualifications, independence, and performance of any auditor or actuary under contract with the RRG;

2. discuss the annual audited financial statements and quarterly financial statements with members of the RRG's management;

3. discuss the annual audited financial statements and, if advisable, the quarterly financial statements, with the RRG's external auditor;

4. discuss the RRG's risk assessment and risk management policies;

5. meet separately and periodically, directly or through a designated committee member, with the RRG's management and external auditor;

6. review with the external auditor any audit problems and the RRG management's response;

7. set clear hiring policies for the RRG's hiring of current or former employees of the RRG's external auditor;

8. require the external auditor to rotate or coordinate the lead auditor and the auditor responsible for reviewing the RRG's audit so that no individual performs the RRG's audit for more

than five consecutive years; and

9. report on its activities regularly to the RRG's board of directors.

The bill allows the commissioner to exempt an RRG from the requirement to establish an audit committee if it demonstrates that it is impracticable to do so and the board is able to accomplish the above purposes.

RISK RETENTION GROUPS CHARTERED OR DOMICILED IN ANOTHER STATE

By law, an RRG chartered in other states and seeking to do business here must submit to the commissioner its plan of operations or a feasibility study and any revisions to the plan or study that were submitted to the RRG's domiciled state. The bill requires the submission of such material revisions within 30 days after the RRG receives its domiciled state's chief insurance regulatory official's approval. If no approval is required, the RRG must submit the revisions to the commissioner within 30 days after submission to its domiciled state.

By law, an RRG doing business in Connecticut but not domiciled here must submit to the commissioner certain financial information, including a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a qualified loss reserve specialist. The bill requires such a statement to be made under criteria established by NAIC.

Under the bill, such RRGs must also submit to the commissioner upon request a copy of any information or document pertaining to any outside audit of the RRG. Current law requires an RRG to submit only a copy of the audit.

Under current law, the commissioner may request an examination of the financial condition of an RRG chartered in another state, to be conducted by the commissioner in the RRG's chartered jurisdiction. If such an examination is not initiated within 60 days, an RRG must

submit to such an examination by the Connecticut commissioner. The bill limits this provision to RRGs that are both chartered and licensed, instead of only chartered, in another state.

NOTICE REQUIREMENTS

Existing law requires an RRG to publish a notice on the front and declaration pages of each issued policy that (1) RRGs may not be subject to all the state's insurance laws and regulations and (2) state insurance insolvency guaranty funds are not available for policies issued through RRGs. The bill requires this notice on the applications for insurance as well.

BACKGROUND

Risk Retention Groups and Related Federal Law

A risk retention group is a corporation or other limited liability association that is formed to assume and distribute the risk exposure of its members. By law, a risk retention group must meet certain chartering, licensing, and anti-trust criteria and be owned by, and provide insurance to, only its members (or an organization comprised solely of its members). Its members must share similar commercial risks, and insurance provided by an RRG to its members must be limited to coverage of the shared risks. Under the federal Liability Risk Retention Act (LRRA) and with certain exceptions, an RRG is primarily regulated by its domiciled state, regardless of whether it also sells insurance in other states.

COMMITTEE ACTION

Insurance and Real Estate Committee

Joint Favorable Substitute
Yea 15 Nay 4 (03/10/2015)